

MINUTES

WARRICK COUNTY AREA BOARD OF ZONING APPEALS

Regular meeting held in the Commissioners Meeting Room,
Third Floor, Historic Courthouse,
Boonville, Indiana, 6:00 P.M.
Monday, December 20, 2010

MEMBERS PRESENT: Larry Willis, Chairman; Mike Winge, Vice Chairman; Tony Curtis, Tina Baxter, and Judy Writsel.

Also present were: Sherri Rector, Executive Director; Morrie Doll, Attorney; and Christy Powell, Staff.

MEMBERS ABSENT: Don Mottley and Terry Dayvolt.

The Chairman declared a quorum.

MINUTES: Upon a motion by Tony Curtis and seconded by Mike Winge, the minutes of the last regular meeting held November 15, 2010, were approved as circulated.

The Chairman explained the Rules of Procedure to the audience.

SPECIAL USES:

BZA-SU-10-29: APPLICANT: New Cingular Wireless PCS, LLC. by Lisa Crammer, Consultant. OWNER: James and Judy Eifler

PREMISES: Property located on the N side of Rockport Rd. (S 200) approximately 0 feet E of the intersection formed by Rockport Road (S 200) and Brown Chapel Rd. (E 175). Boon Twp. 1800 S. Rockport Rd. *(Complete legal on file.)*

NATURE OF CASE: Applicant requests a Special Use SU 18 from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for a cell tower 199' tall in an "A" Agriculture Zoning District. *Advertised in the Boonville Standard December 9, 2010*

Lisa Crammer approached the podium and stated she is representing New Cingular Wireless PCS. She stated her address as 908 Metal Ridge Rd. Jeffersonville, IN 47130.

The Chairman asked if the owners were present also.

Mr. Eifler approached the podium.

The Chairman called for a staff report from the Executive Director.

Mrs. Rector stated they have all return receipts from certified mail to the adjacent property owners. She stated the existing land use is agricultural and vacant. She stated the subject property and all surrounding properties are zoned "A" Agriculture Zoning District with vacant land and residences. She stated all residences are more than 500' away from the lease area and tower. She stated the applicants are requesting a Special Use SU 18 for a 199' tall cell tower. She stated there is some Zone A 100 year flood plain on the far north end of the property but not in the lease area where the proposed tower will be located. She stated the applicant states on the application that "this tower will enhance AT&T service to its customers in this area and provide E-911 access for emergencies." She stated the applicants have answered the proposed use questions in the Board Members' packets. She stated according to the ordinance, the setback requirements from any residential dwelling shall be a distance of 2' per 1' of height of tower. She stated the tower is 199' tall therefore requires 398' between the tower and the nearest residence. She stated they are showing a 500' radius from any other residence, however there is a dilapidated structure on the adjacent property to the west approximately 280' from the proposed tower that is being taxed as a dwelling but according to the property card the structure is "unlivable". She stated the applicants have submitted a map showing no existing tower within 3 miles that they could co-locate on. She stated they do show 2 accommodations in the proposed lease area for future co-location and have submitted a copy of their lease stating the tower removal policy if it ever becomes abandoned or unused. She stated the only other requirement, if approved, would be a Commercial Driveway Permit for a utility pull off required by the County Engineer and the applicants should be aware of that. She stated they went over that during site review.

Mr. Eifler stated they will be using the existing drive.

Mrs. Rector stated they still have to meet the standards of a utility pull off.

Mr. Eifler stated they will have to upgrade it to a Commercial Driveway but it is an existing driveway.

Mrs. Rector stated the application is in order and since there are 5 Board members out of 7 it will take 4 of them to pass any application tonight.

The Chairman asked if she had anything to add to the Executive Director's report.

Mrs. Crammer stated no, the Executive Director covered it very well.

The Chairman stated it is County Ordinance that they co-locate if possible or offer co-locations on their towers.

Mrs. Rector stated yes, they need to show there is no other tower within 3 miles to co-locate on or not able to serve their needs and they meet that requirement.

Mrs. Crammer stated the tower is also designed to accommodate 2 more carriers.

Mr. Eifler stated he signed an agreement to that effect.

Chairman Willis asked if there were any additional questions by Board Members. There being none he asked for remonstrators.

Ralph Kissel approached the podium. He stated he is from Huntsville, Alabama but he owns the property where the dilapidated house is. He stated his only concern is he wishes they could move it away from the fence, out of the fall zone. He stated he doesn't think it would matter to the AT&T people, he doesn't know if it would matter to Mr. Eifler but typically it is 1.5 times the height of the tower.

Mrs. Rector stated the ordinance would require 398' from any residences. She stated this is 280' from the structure he is referring to. She asked if that house is in any way fixable.

Mr. Kissel stated no. He stated it is not the house he's worried about it is the fence row. He stated if someone wanted to build out there in the future, he thinks it devaluates his property.

Mrs. Rector stated it looks like the tower is 60' to the property to the west. She stated she is assuming his fence is on the property line.

Mr. Kissel stated yes.

Mrs. Rector stated she is assuming he wants the tower moved to the east 140'.

Mr. Kissel stated 1.5 times the tower, 300 feet.

Attorney Doll asked where he got the 1.5 measurement from.

Mr. Kissel stated that is what he has seen that people like to use so they have a safe zone. He stated they could back it up from that just so the tower itself doesn't fall over the property line.

Attorney Doll stated page 35 of the Ordinance doesn't talk about property lines; it only talks about dwellings and subsection 5 states that the setback requirement for any residential dwelling property or undeveloped residential district or recorded residential subdivision shall be a distance of 2' for each 1' of height of the tower or 300' whichever is greater. He stated the question is if they consider Mr. Kissel's property residential.

Mr. Winge asked if he does not have a residence on the property now even though it is dilapidated.

Mr. Kissel stated he could build a house on there now but he might be prohibited from building in the future if the tower is approved.

Attorney Doll stated theoretically, unless you went into Industrial property, all property in Warrick County is residential dwelling property. He stated a person could reside in a residence in any property category in Warrick County except Industrial.

Mrs. Writsel stated the Eiflers' own two lots, #1 and #10 on drawing C-1. She asked why they choose to put the tower very close to another person's property rather than centering it on their two properties. She asked if there is something in the terrain, hills, or ditches that would make it a problem. She stated she is also concerned about the categorization of Mr. Kissel's property, if it would be considered residential.

Attorney Doll asked if it has utility service of any kind. He asked if it had power.

Mr. Kissel stated power is available there but it hasn't been used for a long time.

Attorney Doll asked how long it has been since anyone has lived there.

Mr. Kissel stated 15 years maybe.

Attorney Doll stated it is clearly not inhabitable.

Mr. Winge asked if he had a septic system and power on the lot.

Mr. Kissel stated they have electric service but he doesn't know where the field bed would be but there was one.

Mrs. Rector stated if they start scooting it over the other way, unless it goes further back, there are other residences that you can tell people are living in.

Mrs. Writsel stated on #12.

Mrs. Rector stated that the applicants will answer these questions when they come back up to the podium but she thinks a lot of it has to do with the existing entrance on the property.

Mr. Willis asked Mr. Kissel if his concerns are the devaluation of the property, not being able to build a house once they erect that tower and that he is also concerned about the fence row and damage to the property if something would happen and that tower would fall over.

Mr. Kissel agreed.

Mr. Willis asked if the remonstrator had anything further.

Mr. Kissel stated he did not.

The Chairman asked for further questions from the Board for the remonstrator. There being none he asked if there were any other remonstrators for or against this petition. There being none he asked the applicant to approach the podium.

Mrs. Crammer stated as far as the tower falling over, these are strictly designed to collapse; they don't fall in or out. She stated they are structurally designed to fall straight down. She stated as far as locating where they did, his entrance to his property is right there. She stated there was really no other place to go with the other houses out there, that was the only entrance they had. She stated they didn't want to have to cut all the way across Mr. Eifler's field and ruin all of his property. She stated they were trying to stay away from people's homes that actually lived in those homes and again try to leave as much of his field open as possible. She stated as far as property values going down they have had professional assessors do all kinds of assessments on properties around towers and it does not affect the property values at all. She stated she doesn't have the reports with her but they have been done and they don't show any kind of negative values on properties.

Mr. Winge stated looking at the property labeled as #2 in the packet; he asked if they could push the tower back.

Mrs. Crammer stated they don't want to go back because then they would hit flood plain and it starts to slope down and if water runs through it they would have to build a cross over or bridge. She stated they were also trying to stay out of the zone of homes.

Mr. Curtis asked if they approve this and Mr. Kissel wants to build a house at a later date, would it affect where he can build a house on this piece of property.

Mrs. Rector stated no.

Mr. Curtis stated so he could build it where it sits right now, if he would like to.

Mrs. Rector stated as long as it meets the setbacks and the Zoning Ordinance.

Attorney Doll agreed. He stated if the tower pre-dates an application to build a new home at the location then it is 'grandfathered' as to the new application for the home. He stated he would not be precluded from building a new home if he met side setbacks and other standard building measurements, the tower would have no disqualifying effect on him being able to obtain an Improvement Location Permit.

The Chairman asked if they could move the tower further to the center of the property in the same line horizontally move it into the property to get further away from the sideline of Mr. Kissel's property.

Mr. Winge asked how much further they can go to those houses.

Mrs. Crammer stated it depends on how far they want them to go unfortunately because now they have to redesign the road and they were trying to avoid knocking down trees. She stated she doesn't think they are right up to the fence line. She stated they were trying to stay on the tree line because they don't want to take down any trees. She stated they thought they met all the setbacks. She stated they would have to re-design a lot.

Attorney Doll asked if they ever had a tower fall.

Mrs. Crammer stated no sir.

Attorney Doll asked how many of these do they have.

Mrs. Crammer stated there are tons, they are all over. She stated when Hurricane Katrina hit, no towers fell. She stated they lost service because they were under water but not a single tower fell.

Attorney Doll asked if those were the same designed towers as this one is designed.

Mrs. Crammer stated yes, they are designed to stand up to 90mph wind.

Attorney Doll stated and if it falls it is designed to collapse not to lie down.

Mrs. Crammer stated yes, it is not going to be like a tree that falls down; it is designed to fall in on top of itself.

Mr. Willis asked if it is a monopole.

Mrs. Crammer stated yes.

Mrs. Writsel asked if someone built a house where this dilapidated house is, does this tower cause any electronic interference.

Mrs. Crammer stated no, they are on a totally different wavelength than what the telephone, radio, satellite etc. are on.

Mr. Willis asked if there were any questions by the Board.

Attorney Doll stated he thinks he needs to point out to the Board, obviously the public policy decision is the Board's but the Ordinance states that the setback requirement from any residential dwelling property. He asked would this be a residential property. He stated it has been one but currently he would ask the Board to question if this is a current residential property and he thinks the answer would have to be it is not. He stated the next part of the ordinance states OR an undeveloped residential district. He asked if the Board would consider this an undeveloped residential district and if it is as he said earlier, theoretically all of Warrick County except Industrial zoned sites would be an undeveloped

residential district. He stated if they say that is true then they would have to be 300' or 2x the height from any other residential district. He stated theoretically Mr. Eiflers' property is a residentially developable district. He stated he is not sure how they get 300' away from the very property it is sitting on. He stated he is troubled by this ordinance. He stated lastly in the Ordinance it states from any recorded residential subdivision and clearly that does not apply. He stated the Ordinance does not say they have to stay away from property lines, it says they have to stay away from these specific residential categories of property and he thinks the only one that might be an issue is whether this is an undeveloped residential district. He continued if the Board approves it Mr. Kissel has certain rights of appeal, Writ of Certiorari, and they get to see the judges. He stated if the Board denies it, New Cingular Wireless has a right to appeal it if they want to. He directed the Board to look at the findings of facts, whether the Board thinks this constitutes a nuisance or serious hazard to vehicles, pedestrians, or residents. He stated there isn't anyone living in that house so he's not sure how it could be a hazard to the residents.

Mrs. Rector stated she is not on anyone's side but she did want to direct the Board's attention to the fact that Mr. Kissel owns 40 acres, this entire large parcel of ground so it's not that a house couldn't be built anywhere on the property.

Mr. Winge stated a whole subdivision could be built there.

Mrs. Baxter stated that Mr. Kissel's concern is the tower falling on his property and when they've explained the design of the tower, she can't see that even if someone was at that residence that there would be a problem. She stated acts of God can happen but it is designed to collapse and there are towers in a lot of residential areas and that is why they design them that way.

Mr. Willis asked if there were any other questions by the Board. There being none he entertained a motion.

Mike Winge made a motion finding of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to the property being in compliance at all times with the applicable zoning ordinance of Warrick County.
2. Subject to all public utility easements and facilities in place.
3. Subject to an Improvement Location Permit being obtained.
4. Subject to any required building permits from the Warrick County Building Commission.
5. Subject to a Commercial Driveway Permit for a Utility Pull Off.
6. Subject to the Comprehensive Zoning Ordinance's tower removal policy if the tower is ever abandoned or unused. (A copy of the notice sent to the FCC of the intention to cease operation shall be sent to the Area Plan Commission.)

The motion was seconded by Tony Curtis and carried.

BZA-SU-10-31: APPLICANT: Vigo Coal Operating Co., Inc. by John Harman, President OWNER: ALCOA, Inc. by Royce Haws, President of Alcoa Fuels, Inc.

PREMISES: 248 acres located on the S side of Red Brush Rd. (S 675) approximately 100 feet NE of the intersection formed by SR 61 and SR 66. Anderson Twp Sec 4 & 9 Twp 7 Rng 8. 6800 SR 61 (Complete legal on file.)

NATURE OF CASE: Applicant requests a Special Use SU 13 from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow a surface mining operation consisting of 248 acres in an “A” Agriculture and “M-2” General Industrial Zoning District. *Advertised in the Boonville Standard December 9, 2010*

Dennis Kirkland representing Vigo Coal Operating Co. approached the podium.

Jim Beck representing Alcoa approached the podium and stated he is the Communications and Public Affairs Manager for the plant.

Mr. Willis asked the Executive Director for a staff report.

Mrs. Rector stated there were no notices required to be sent out because all of the surrounding property within 1000’ is owned by ALCOA, Inc. She stated the existing ground is farm ground with a cemetery which is of course not a part of the application. She stated they will have to meet all state regulations on ground disturbance around a cemetery. She stated the subject property is zoned “M-2” General Industrial and “A” Agriculture Zoning District. She stated the property to the north is zoned “C-3” (the union hall), to the northwest is a farm and to the northeast is “A” Agriculture (vacant land). She stated the property to the east and west is zoned “A” Agriculture and is vacant. She stated the property to the South is zoned “M-2” General Industrial and is the plant. She stated the applicants are requesting an SU-13 for Mineral Extraction. She stated there is no flood plain on the subject property. She stated the applicants state on their application “The mining area is a 248 acre area that is currently used as pasture and crop land. Vigo Coal Operating Co., Inc. plans on recovering the No. 5 coal seam by using a combination of conventional surface mining methods and high wall / auger mining methods.” She stated the applicants have answered the proposed use questions in the Board Member’s packets. She stated they have an email from Richard Meyer with INDOT about the coal mine requirements for accessing SR 61 & 66. She stated the State will require a Commercial Drive Permit. She stated the email they received from Mr. Meyer said “We did sit down and talk to the folks with Vigo Coal this past August and explained to them what their requirements would be. As far as I know they have not been back in touch with us. To answer your question they will need to come back to us and submit a permit application with the additional necessary items for a commercial drive if they are in fact planning on entering and exiting SR 61.” She continued that of course any approvals would have to be conditioned on the state agreements and entrance permits. She stated if the special use is approved and they use any of the County Roads the same thing goes, Mr. Howard the County Engineer will also require a Road Use Agreement and / or a Commercial Driveway Permit if Red Brush Rd is the point of access. She stated the application is in order.

The Chairman asked if the applicants had anything to add to the Executive Director’s staff report.

Mr. Kirkland stated as far as speaking with Richard Meyer, they did have a meeting several months ago and he did follow up with the gentleman in the Vincennes district and told him that they did a cost analysis of the improvements that would have to be done on SR 61 in order to use that as an ingress/egress from the property and pretty much discarded that as an option. He stated they are currently looking to utilize Red Brush Rd. as ingress and egress on the northern side of the property and at the same time they are working with Norfolk Southern to try and get a crossing over to where they have always hauled off the original Red Brush Mine. He stated they’ve got a couple of different alternatives and obviously the least amount of roadways that they can affect would be the best.

The Chairman asked if there were any questions by Board Members.

Mr. Beck stated he would like to give a general overview about why Alcoa needs this project. He stated this is an important step for them in securing their long-term coal supply. He stated the plant is celebrating its 50th anniversary in Warrick County this year. He stated part of the reasons why they located here 50 years ago was reliable workforce, strategic position along the Ohio River and of course abundant coal supplies. He stated many of the smelters across the United States have closed because they have lost access to power so this project is one key step in their coal strategy as a plant. He stated it will provide coal for about a 1 year time frame. He stated they will be able to use some of the assets that Vigo already has in the area and continue to supply coal for the Warrick Power Plant. He stated

they recently upgraded the power plant to put state of the art scrubbers on it which allows them to use Illinois basin coal, coal in this county, to be able to burn that in an environmentally friendly way and to reduce the sulfur dioxide emissions. He stated they look at this as a really good project for them to be able to utilize the coal right across the street from the plant and begin to develop their other coal strategies right here in Warrick County. He asked for their approval tonight on this project.

Attorney Doll stated this is an example where they've amended the County Ordinance to allow for mining activities in an M-2 category because historically they've not allowed that in Warrick County and couldn't frankly figure out why they hadn't. He stated this property at one time was zoned Agriculture and it didn't make any sense for the coal mine to have to down zone it to be able to mine it. He stated Warrick County in an attempt to be progressive, to help, amended the Zoning Ordinance to allow mining activity in an "M-2" Zoning District.

Mr. Beck stated another thing he wanted to add that Vigo Coal does mine at the Chili Pepper mine. He stated the Chili Pepper haul route does go on Kaiser Rd. and the Chili Pepper Mine would be concluded at the time that this mine would start. He stated regardless of whether it is Red Brush Rd. or SR 61 ingress or egress there would be a shorter haul route to the plant than what there is currently with the Chili Pepper Mine.

The Chairman asked for questions by Board Members.

The Chairman stated then they are planning on closing one mine at the same time they are opening up the other mine and using the same equipment they have onsite now.

Mr. Kirkland stated yes.

Attorney Doll asked if Alcoa owns more mineable lands after this.

Mr. Beck stated what is before the Board tonight is one particular application involving surface mining. He stated they do currently have another permit where Vigo is the applicant on their behalf for Liberty Mine, LLC. He stated so both this mine and Liberty Mine are both active in permit review through the Department of Natural Resources right now.

Attorney Doll asked if he had any idea what their reserves are in terms of consumption period.

Mr. Kirkland stated for this property there is somewhere in the neighborhood of 400,000 tons and that is basically a one year time frame.

Attorney Doll asked beyond that if Alcoa would have additional reserves and for how long.

Mr. Kirkland stated the idea behind this mine is they conclude Chili Pepper Mine, they go to Red Brush mine, Red Brush lasts about a year, and then they look to go to Liberty Mine, and that would be 5-7 years of surface mining there in Phase I. He stated there is enough mineable reserves at Liberty and northern Warrick County to be able to take that mine to a 20 year lifespan if it ever should go underground.

Attorney Doll stated they just don't want them to go away.

Mr. Kirkland stated they are happy to be here for another 50 years.

The Chairman asked for questions by Board Members. There being none he asked for remonstrators for or against this petition. There being none he entertained a motion.

Tony Curtis made a finding of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.

5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Applicant must be in compliance with all present State and Federal applicable statutes and administrative regulations. Should such statutes or regulations be repealed or weakened in their stringency during the operation of the mining activities, the applicant shall remain bound by the provisions as they exist as of this date.
2. Subject to any Road Use Agreement or Commercial Drive Permits deemed necessary by the State or County Engineer.
3. Subject to meeting all local regulations and permitting.
4. Subject to approval for this application only.

Mike Winge seconded and the motion carried.

VARIANCES:

BZA-V-10-30: APPLICANT AND OWNER: Cheryl A. Welte-Fuller.

PREMISES: Property located on the W side of Bell Rd. (W 850) approximately 700' S of the intersection formed by Bell Rd. (W 850) and Jenner Rd. (S 150) Ohio Twp. Parcel 1 Pasco Minor Sub. 1655 Bell Rd. (*Complete legal on file.*)

NATURE OF CASE: Applicant requests a Variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for a single family dwelling on property with an existing single family dwelling to be removed in an "A" Agriculture Zoning District. *Advertised in the Boonville Standard December 9, 2010*

Cheryl Welte approached the podium.

The Chairman called for a staff report from the Executive Director.

Mrs. Rector stated they have all return receipts from certified mail to the adjacent property owners. She stated the existing land use is residential; Pr 1 Pasco Minor. She stated the subject property and all surrounding properties are zoned "A" Agriculture Zoning District except for Ms. Welte's additional property to the South (Pr 2 of Pasco Minor) which is zoned "C-4" General Commercial and is a painting business. She stated the Applicant is requesting a Variance for an Improvement Location Permit to be issued for the construction of a house on property with an existing house to be removed. She stated there is some Zone AE 100 year flood plain on the property however it is 140' from the proposed house. She stated it meets the flood plain requirement. She stated the Applicant states on her application that she wishes "to allow her existing residence to remain standing; giving herself a place to live during construction of a new home. Removal of the existing residence before the new residence is complete would create a financial hardship and she is proposing to remove the existing residence after new construction is complete and a Certificate of Occupancy has been granted." She stated typically on Variance requests such as this, the Board, if approved, grants so many days to remove the existing house after the Certificate of Occupancy on the new house is issued. She stated the application is in order.

The Chairman asked if she had anything to add to the Executive Director's report.

Ms. Welte stated no.

The Chairman asked for questions by the Board Members.

Mr. Curtis asked if she is planning on tearing down the existing house after the new house is built.

Ms. Welte stated yes.

Mr. Winge asked what kind of a time frame she would like to move that house.

Ms. Welte stated she would like to have at least 3-4 months after move in date.

Mr. Winge asked if she would be comfortable with 4 months.

Ms. Welte stated yes, she actually plans to have it done in a lot less time but there are other variables that play into that.

Attorney Doll stated the Board needs to decide what is peculiar or unique about the property giving rise to the need for the Variance. He stated possibly the short duration of time that this would overlap. He stated the economic hardship could be argued for just about anybody. He stated there isn't anything really unique to the shape of this lot.

Chairman Willis asked what type of items she stores in her outbuilding.

Ms. Welte stated lawn and garden equipment to maintain the property and her business. She stated the commercial property to the south is her business.

Chairman Willis stated so she needs to remain on the property to watch over her business and protect the property from vandalism or theft. He asked for any further questions by the Board. There being none he asked for any remonstrators for or against this petition. There being none he entertained a motion.

Mike Winge made a motion to approve the Variance Application based upon and including the following findings of fact:

1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.
2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.
3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is protection of the large equipment to maintain both properties and oversight of the commercial business adjacent to the property and the total short duration of time required to build the new house and raze the existing residence.
4. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.
5. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.
6. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.
7. That the hardship to the applicant's use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.
8. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.
9. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the

provision of the Variance are adhered to within the aforesaid six (6) month period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.

10. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:
 - a) Subject to an Improvement Location Permit being obtained.
 - b) Subject to any required Building Permit from the Warrick County Building Department being obtained.
 - c) Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
 - d) Subject to all utility easement and facilities in place.
 - e) Subject to the existing house being removed within 120 days after the Certificate of Occupancy is issued.

Tony Curtis seconded and the motion carried.

BZA-V-10-32: APPLICANT: Head Construction by Jeff Head, Owner OWNER: Gregory & Deborah Edrington

PREMISES: Property located on the S side of Old Plank Rd. (W 700) approximately 450' SW of the intersection formed by Old Plank Rd. (W 700) and Woodland Springs Dr. Ohio Twp. *1256 Old Plank Rd. (Complete legal on file.)*

NATURE OF CASE: Applicant requests a Variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for an addition to an existing residence not meeting the minimum front yard requirement of 25', addition will be 5' from the right of way and encroaching in the building line by 20' in an "A" Agriculture Zoning District. *Advertised in the Boonville Standard December 9, 2010*

Jeff Head approached the podium.

Gregory Edrington approached the podium and stated he is the owner of the property.

The Chairman requested a staff report from the Executive Director.

Mrs. Rector stated that Mr. Head's secretary sent out the notices certified mail however it was not with return receipt and it was too close to the meeting for them to re-notice. She stated they have the receipts where the notice was sent certified mail and printouts showing they received them and a waiver all adjacent property owners signed that had been used in the past.

Attorney Doll reviewed the waiver of notice and asked if they have waivers from everyone.

Mrs. Rector stated yes.

Attorney Doll asked if it was published.

Mrs. Rector stated yes.

Attorney Doll stated they are good to go.

Mrs. Rector continued with the staff report stating the existing use of the property is residential. She stated all surrounding property is zoned "A" Agriculture and "R-1A or B" One Family Dwelling Zoning District with residences. She stated Woodfield II Subdivision is to the southeast and Albert Fisher Subdivision is to the southwest. She stated the applicants are requesting a Variance for an Improvement Location Permit to be issued for the addition of a laundry room and garage to an existing residence not meeting the minimum front yard requirement of 25'. She stated the addition will be 5' from the right of way, encroaching in the building setback as established in the Zoning Ordinance by 20'. She stated there is no flood plain on the subject property. She stated the Applicants state on their application "The home-owner can't navigate the stairs because of back problems. The laundry room is to be attached to back area of garage addition. Her condition is getting worse with age. The garage

and laundry room will allow her to park closer to the house and walk to same level laundry room.” She stated Bobby Howard, the County Engineer, has given us a letter stating he has made an inspection of 1256 Old Plank Rd and the proposed edge of the garage is located 35 feet off the center line (5 feet off the right of way), and as shown on the drawing provided it would appear that sight distance is adequate. She stated the application is in order. She stated they are adding on to an existing home; it is not a new home

The Chairman asked if the applicants had anything to add.

Mrs. Rector asked the applicant to explain why they are building it in that location and not to the back of the property away from the road.

Mr. Head stated because the way the house is designed, they have a living room with a window in it that they will cut out and she can exit from the living room and go into the laundry room. She stated if they went farther back, her car would run into the wall with the window.

The Chairman stated to reiterate, the lady of the house has problems walking and climbing and things of this nature. He stated so they are trying to get everything on one level to make it convenient.

Mr. Edrington stated yes that is correct, currently the laundry is in the basement of their house and his wife is a diabetic so they are telling them that her condition is going to continue to deteriorate with age.

Mr. Winge stated what they are saying, looking at the layout of the house, it doesn't look feasible to go to the back; it would cost a lot more.

Mrs. Rector stated what the Board can see by the aerial photo, it is not lined up with other houses where it would be sticking out in front of the rest of them, the way that the road curves.

Attorney Doll stated it is an irregularly shaped lot.

There was some discussion about the aerial photo.

Mr. Willis stated the yard barn looks like it is sitting in front of the house.

Mr. Edrington stated the front actually faces to the west because of the way the house sits on the property.

Mr. Willis asked if the addition will be going on the side of the house or the front of the house.

Mr. Edrington stated it will come off the side, the North side of the house.

Attorney Doll asked if there were any restrictions on the garage being in front of the house.

Mrs. Rector stated this would be an addition to the residence so it wouldn't make a difference.

Mrs. Rector stated the addition is drawn on the aerial and as the Board can see it is not going to be right on top of the pavement.

Mrs. Writsel stated this is mainly a garage with the laundry room in one corner of it so it is mainly a 32' x 24' garage. She stated that is a big garage.

Attorney Doll asked if the house ever had a garage.

Mr. Edrington stated no.

Mr. Winge stated the purpose for the garage is as she becomes more ill she can get into the house easier.

Mr. Edrington stated yes, so she can get out of the vehicle and weather easier and get straight into the house.

Mrs. Rector asked what the average size garage on a residence is. She asked if this was a two car garage.

Mr. Head stated yes it is a 2 car garage; most garages are 24' x 24'.

Mr. Edrington stated it is going to be 32' deep to allow for the laundry room at the back.

Mr. Winge stated that little offset messes it up a little bit. He stated if they didn't make it that deep they could only get one car in there.

The Chairman asked if there would be steps going from the garage up to the residence floor.

Mr. Head stated there will have to be a step going from the concrete up to the house and then there will be block so when she comes out of her living room into the laundry room it will all be on the same floor.

The Chairman asked if Mr. Howard stated whether the pavement was centered or offset. He stated his concern is that they are close to the pavement.

Mrs. Rector stated he is taking it as the center line of the road. She stated according to the aerial it would be about 20 plus feet to the edge of the pavement.

The Chairman asked if there were any questions by Board Members. There being none he asked if there were any remonstrators for or against this petition. There being none he entertained a motion.

Tony Curtis made a motion to approve the Variance Application based upon and including the following findings of fact:

1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.
2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.
3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is the shape of the lot and where the house is built on the lot in addition to the health condition of the property owner.
4. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.
5. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.
6. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.
7. That the hardship to the applicant's use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.
8. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.
9. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month period. Upon

advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.

10. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:

- a. Subject to an Improvement Location Permit being obtained.
- b. Subject to any required Building Permit from the Warrick County Building Department being obtained.
- c. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
- d. Subject to all utility easement and facilities in place.

Tina Baxter seconded and the motion carried.

OTHER BUSINESS:

Special Use Amendments

Mrs. Rector stated the Board has in their packets a copy of what has been agreed upon as far as the 10 day notice changing to 21 day notice to the abutting surface property owners in the case of the SU-13. She stated this is advertised to go to the Planning Commission in January, then to the Commissioners in February so she will not bring new Rules of Procedure to the Board until the February meeting. She stated in January the Board will need to adopt the current ones until the new ones are done and this ordinance is changed so this is just for the Board's information. She stated this is what went into the paper this week.

ATTORNEY BUSINESS:

Attorney Doll stated that he received a notice of request for transfer Saturday of the Hamby vs. Board of Zoning Appeals cases to the Indiana Supreme Court. He stated the Board will recall this is the wind turbine case which they won at the trial level as per the rights of the County Ordinance to allow wind turbines to be built. He stated they won at the Court of Appeals and they won a second time at the Court of Appeals and now Mr. Hamby and his council have appealed every turndown of the case and have asked the Indiana Supreme Court to grant certiorari and take the case. He stated he received it Saturday and he has 30 days to reply so they go to round 4. He stated the irony of this is as the Board may recall, Dr. Johnson is no longer building the house. He stated that is the idiocy of this whole process, there is no wind turbine being built and yet they are possibly in the Indiana Supreme Court for this case.

Mr. Winge stated well they might as well because if one comes back up again, at least they are over the hurdle.

Attorney Doll stated he understands that but it costs the tax payers of Warrick County and they are fighting over a hypothetical wind turbine.

Mr. Winge stated he understands but someone has got some intent in there or they wouldn't be pushing.

Attorney Doll stated if the Supreme Court would strike down the Warrick County Ordinance, the Commissioners could pass a different one and the whole issue is right back to where folks can build wind turbines again. He stated it is specific to the ordinance so if this ordinance suddenly fails legal tests the Commissioners can pass another Ordinance.

Mr. Winge asked the Attorney what he suggests the Board does.

Attorney Doll stated they have no choice, they are passengers, they have been sued, they have to defend this case, and it is just frustrating that they are literally going to the Indiana Supreme Court over something that is not being built.

EXECUTIVE DIRECTOR BUSINESS:

Mrs. Rector asked if Mr. Curtis would be off the Board as of next year.

Tony Curtis stated he believes so, he has to talk to Scott Dowers but he probably will not be back next year.

Mrs. Rector stated she knows he's going to school so she wanted to tell him thank you if they don't see him back next year and Mr. Winge's appointment is also up and she's not sure what will happen. She stated also Mrs. Writsel is appointed according to the appointments on the Advisory Council on Town Affairs as far as who goes on the Planning Commission Board and Board of Zoning Appeals etc. so if they are back they will see them next year and if not she would like to extend a thank you to both of them for serving on the Board as well. She stated Attorney Doll was appointed by the Planning Commission at the last meeting to serve for the next two years.

Attorney Doll stated thank you, he enjoys it.

Chairman Willis stated he is good at it and he wanted to thank Attorney Doll for his service to the Planning Commission and the Board of Zoning Appeals, he believes they have good council. He stated he wants to extend a thank you to each and every member. He stated they all listen intently and speak up and talk about the items. He stated their job is very important to the community and wished everyone a Merry Christmas.

Mr. Winge stated to the attorney that he uses a lot of common sense which isn't very common anymore. He stated he really appreciates that.

Mike Winge made a motion to adjourn.

Tony Curtis seconded and the motion carried.

Being no other business the meeting adjourned at 7:30 pm.

Larry Willis, Chairman

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of said Board at their monthly meeting held December 20, 2010.

Sherri Rector, Executive Director & Secretary